

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
(Before Owens, P.J., and Talbot and Meter, JJ.)

HIGHLAND-HOWELL DEVELOPMENT
CO. , L.L.C.,

Plaintiff-Appellee,

Docket No. 122843

vs.

TOWNSHIP OF MARION,

Defendant-Appellant.

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APPELLANT TOWNSHIP OF MARION'S
REPLY BRIEF ON APPEAL

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ARGUMENT

**THE CLAIMS IN COUNT I OF HIGHLAND-HOWELL'S
FIRST AMENDED COMPLAINT ARE WITHIN THE
EXCLUSIVE JURISDICTION OF THE MICHIGAN TAX
TRIBUNAL BECAUSE THESE CLAIMS ARE BASED ON
THE TOWNSHIP'S DECISIONS AND DETERMINATIONS
RELATING TO SPECIAL ASSESSMENTS FOR PUBLIC
SEWER SERVICE UNDER PROPERTY TAX LAWS.**

- 1. The Tax Tribunal's jurisdiction is based on a connection between an agency's action and a special assessment, and the nature of the cause of action itself is irrelevant.**
-

In its brief, Highland-Howell repeatedly asserts that the Michigan Tax Tribunal lacks jurisdiction over claims for breach of contract and promissory estoppel. The Township submits that this is a misstatement of the law – a misstatement that forms the premise of Highland-Howell's entire argument on this appeal.

In truth, the exclusive and original jurisdiction of the Tax Tribunal, as set forth in MCL 205.731(a) and (b), has nothing to do with the nature of the moving party's cause of action, and has everything to do with 1) the action taken by the agency and 2) the existence of a connection between that action and a special assessment levied under property tax laws. There can be no dispute in this case that the special assessments levied by the Township for public sewer improvements were special assessments "under property tax laws".¹ Thus, the real issues in this case are 1) whether Highland-Howell's causes of action concern final decisions or determinations of the Township, and 2) if so, whether those decisions and determinations "related to" the special assessments referred to in Count I of Highland-Howell's First Amended Complaint (Appellant's Appendix, pp. 20a-24a, ¶¶8-10).

¹ "[S]pecial assessments levied against property owners for public improvements to realty which especially benefit their property are special assessments under the property tax laws for the purposes of the Tax Tribunal Act." Wikman v City of Novi, 413 Mich 617, 636; 322 NW2d 103 (1982).

In truth, the exclusive and original jurisdiction of the Tax Tribunal is not nearly as narrow as Highland-Howell claims. Beyond challenges to the validity or amount of a special assessment, the Tax Tribunal's jurisdiction extends to the review of all final agency decisions and determinations "relating to...special assessments", MCL 205.731(a), regardless of whether those decisions and determinations give rise to claims for breach of contract, promissory estoppel, fraud, or other actionable wrongs. Thus, the assertion at page 20 of Highland-Howell's brief that "[t]he statute on its face does not include contract and quasi-contract claims" is a non sequitur.

2. In attributing to the phrase "relating to" in MCL 205.731(a) its common and approved usage, it is appropriate to resort to dictionary definitions.

Highland-Howell argues that dictionary definitions of "relating" or "relationship" are not helpful because "they do not and cannot define with precision the closeness of the required relationship" (Highland-Howell's brief, p. 22). From this point, Highland-Howell embarks upon a critical analysis of this Court's decisions in Wikman v City of Novi, 413 Mich 617; 322 NW2d 103 (1982) and Romulus City Treasurer v Wayne County Drain Comm'r, 413 Mich 728; 322 NW2d 152 (1982) ("[t]he opinions in both Wikman and Romulus leave something to be desired as a matter of statutory construction" (brief, p. 25)), picking and choosing segments from these decisions that allegedly support its narrow view of the scope of Tax Tribunal jurisdiction. The Township submits that this analysis is based on a faulty premise and does not merit this Court's consideration.

In truth, the legislature has directed the courts to employ certain rules of statutory construction in MCL 8.3, as stated in MCL 8.3a to 8.3w. MCL 8.3a states in pertinent part as

follows: “All words and phrases shall be construed and understood according to the common and approved usage of the language; ...” In its recent decision in Schulz v Northville Public Schools, 469 Mich 285; 666 NW2d 213 (2003), this Court reaffirmed the propriety of resorting to dictionary definitions in determining the meaning of a nonlegal word or phrase that is not defined within a statute. See Horace v City of Pontiac, 456 Mich 744, 756; 575 NW2d 762 (1998) and State ex rel Wayne County Prosecuting Attorney v Levenburg, 406 Mich 455, 465; 280 NW2d 810 (1979). If the statute is unambiguous, the legislature will be presumed to have intended the meaning expressed, “and the courts enforce that meaning without further judicial construction or interpretation.” Schulz, supra at 290, citing Grievance Administrator v Underwood, 462 Mich 188, 193-194; 612 NW2d 116 (2000).

3. The phrase “relating to”, as used in MCL 205.731(a), means having a relationship, connection, or association with.

Dictionary definitions, found to be dispositive by this Court in Schulz, supra, 469 Mich at 292, similarly define the words “relate” and “related” as having a connection, relationship or association with when used with the word “to”. See, e.g., Webster’s New Twentieth Century Dictionary Unabridged (Second Edition 1966) (“to have some connection or relation (to)”); American Heritage Dictionary, New Collegiate Edition (1975) (“to have connection, relation, or reference. Used with “to””); Webster’s New Collegiate Dictionary (1981) (“to have relationship or connection”); Black’s Law Dictionary, Revised Fourth Edition (1968) (“to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with; with “to””). See also Ingersoll-Rand Co. v McClendon, 498 US 133, 139; 112 LEd2d 474; 111 SCt 478 (1990) (“A law ‘relates to’ an employee benefit plan, in the normal sense of the

phrase, if it has a connection with or reference to such a plan”, citing Shaw v Delta Air Lines, Inc., 463 US 85, 96-97; 77 LEd2d 490; 103 SCt 2890 (1983), which in turn cites Black’s Law Dictionary (5th Ed. 1979) in defining “relate”). Accordingly, the common and approved usage of the phrase “relating to” as used in MCL 205.731(a), based on dictionary definitions, is “having a relationship, connection, or association with.”

4. **The allegations in Highland-Howell’s First Amended Complaint establish the relationship between the Township’s decision to remove the east-west trunk line from its sewer plans and the special assessments for public sewer service levied on Highland-Howell’s property.**

Highland-Howell’s claims in Count I of its First Amended Complaint, couched as claims for “breach of contract” and “promissory estoppel”, are based on certain described decisions and determinations made by the Township in relationship to its special assessment sanitary sewer district. The relevant allegations in Count I are set forth in Paragraphs 8 through 11 and 13 as follows:

8. **Defendant adopted a sanitary sewer district which included Plaintiff’s property. Defendant adopted plans for the sewer improvements which plans included Plaintiff’s east-west sewer line.**
9. **Defendant adopted a special assessment roll which allocated a disproportionate share of the cost of the sewer improvements to Plaintiff’s property.**
10. **Plaintiff justifiably relied upon Defendant’s promises concerning the installation of the east-west sewer line and the date upon which sewer service would be available to Plaintiff’s property by acquiring and approving the property, by declining sewer service from the City of Howell, by not seeking approval of a privately owned wastewater treatment system, by **not objecting, at that time, to the disproportionate special assessment****

allocated to Plaintiff, and by taking other actions. The actions taken by Plaintiff in reliance on Defendant's promises were detrimental to Plaintiff.

11. **Defendant breached its promises to Plaintiff** and as of the date of this amended complaint, Defendant still has not made sewer service available to Plaintiff's property.
13. Defendant's breach of its promises has caused Plaintiff damages in excess of \$25,000 including...the loss of the value of the east-west sewer line.

Appellant's Appendix, pp.
21a-22a (emphasis added).

As the foregoing allegations demonstrate, what Highland-Howell is clearly contesting is the decision of the Township to remove the east-west trunk line traversing Highland-Howell's property from the plans for the sewer system that is the subject of the Township's special assessment sewer district. Notwithstanding the contrary protestations of Highland-Howell and the flawed legal rationale employed by the Court of Appeals below, the test of the Tax Tribunal's jurisdiction is not whether a claim challenges a special assessment, but rather whether the claim challenges actions of a township or other agency that "relate to" special assessments under property tax laws.

Measured against this correct statement of the test of Tax Tribunal jurisdiction, the allegations in Count I of the First Amended Complaint must lead this Court to the conclusion that the Township's motion for summary disposition was properly granted by the trial court. These allegations state that the Township created a special assessment district for sanitary sewers that included an east-west trunk line across Highland-Howell's property; that Highland-Howell took certain actions in reliance on the Township's promises relative to this trunk line; that the Township breached these promises by removing the trunk line from the plans for the special assessment sewer district; and that as a result of the Township's actions, Highland-Howell, while

continuing to be burdened with a disproportionate special assessment for sewer service to its property, has lost the value of the east-west trunk line.

The Township submits that a rational argument cannot be made that these allegations do not state claims based on decisions, determinations and/or actions of the Township “relating to” special assessments under property tax laws as the phrase “relating to” must be construed and understood pursuant to Michigan statutes and case law. Highland-Howell’s arguments in support of its claim of circuit court jurisdiction are predicated on a flawed premise that Tax Tribunal jurisdiction is limited to claims directly challenging special assessments, and can never reach claims labeled “breach of contract” or “promissory estoppel”. Accordingly, these arguments lack merit and must be rejected.

In sum, the allegations in Count I of the First Amended Complaint bring Highland-Howell’s claims, however couched or designated, within the exclusive and original jurisdiction of the Michigan Tax Tribunal because they contest the actions of the Township in removing from the special assessment sewer district project an east-west trunk line across Highland-Howell’s property – actions which plainly and clearly “relate to” special assessments under property tax laws in a direct and fundamental way. To allege, as Highland-Howell has, that the Township breached promises which led Highland-Howell to refrain from objecting to a disproportionate special assessment allocated to it and that, as a result of these breaches, it has lost the value of the east-west trunk line for which it has been disproportionately assessed, is to draw a relationship or connection between the Township’s alleged actions and the special assessments levied on Highland-Howell’s property that simply cannot be argued away.

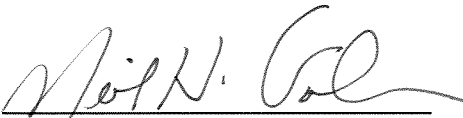
CONCLUSION AND RELIEF REQUESTED

Highland-Howell's brief takes this Court on a guideless journey that ends with the legally erroneous assertion that the exclusive and original jurisdiction of the Michigan Tax Tribunal does not extend to claims with the labels "breach of contract" or "promissory estoppel." In truth, the label placed on a claim is irrelevant; what matters is the existence of a relationship, or connection, between the challenged decisions of the agency and special assessments it has levied under general property tax laws. Because the allegations in Count I of the First Amended Complaint establish the existence of such a relationship or connection, controlling principles of Michigan law compel the conclusion that the claims asserted therein are within the exclusive jurisdiction of the Michigan Tax Tribunal.

The Township therefore prays for reversal of the judgment of the Court of Appeals.

Respectfully submitted,

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